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FEDERAL ELECTION COMMISSION

999 E Street, N.W.
Washington, D.C. 20463

CELA

FIRST GENERAL COUNSEL'S REPORT

MUR 6343

DATE COMPLAINT FILED: August 5, 2010
DATE OF NOTIFICATION: August 11, 2010
DATE OF LAST RESPONSE: September 29, 2010
DATE ACTIVATED: November 10, 2010

STATUTE OF LIMITATIONS: July 15, 2015 – Nov. 2, 2015

COMPLAINANT: Brendan Lantry

RESPONDENTS: Michael McMahon
Mike McMahon for Congress and George Caputo, in his
official capacity as treasurer

RELEVANT STATUTES: 2 U.S.C. § 438(a)(4)
11 C.F.R. § 104.15(a)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

Based on an article posted on *politico.com*, complainant alleges that Michael McMahon and Mike McMahon for Congress and George Caputo, in his official capacity as treasurer, (the "Committee"), violated the "sale or use" provision of the Federal Election Campaign Act of 1971, as amended (the "Act"). Specifically, the complaint alleges that McMahon and the Committee compiled a list of contributors to Michael Grimm, McMahon's general election opponent, from Grimm's committee's 2010 July Quarterly disclosure report, and used it to solicit contributions from those individuals.¹ See "Fired Aide in 'Jewish Money' Flap Speaks,"

¹ McMahon, a one-term Democratic congressman running for re-election in New York's 13th Congressional District, lost the 2010 election to Michael Grimm.

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1 *www.politico.com*, August 3, 2010, Attachment 1 to the Complaint at 2 ("*politico.com* article").
2 The Response does not deny compilation of the list, but states that the list was not actually used
3 to solicit contributions, and thus no violation occurred.² Because the available information does
4 not support the respondents' use of the list to solicit contributions, we recommend that the
5 Commission find no reason to believe that Michael McMahon or Michael McMahon for
6 Congress and George Caputo, in his official capacity as treasurer, violated 2 U.S.C. § 438(a)(4),
7 and close the file.

8 **II. FACTUAL AND LEGAL ANALYSIS**

9 ~~In relevant part, 2 U.S.C. § 438(a)(4) provides that the Commission shall make available~~
10 to the public reports and statements filed with the Commission, except that any information
11 copied from such materials may not be sold or used by any person for the purpose of soliciting
12 contributions or for commercial purposes, other than using the name and address of any political
13 committee to solicit contributions from such committee. See 11 C.F.R. § 104.15(a).

14 The *politico.com* article upon which complainant relies reports (without quoting her) that
15 Jennifer Nelson, a former Committee spokesperson, stated that the Committee had compiled a
16 list, the purpose of which "was an analysis of potentially peachable donors from McMahon's
17 rivals after the second quarter fundraising filings came out." See Complaint, Attachment 1.
18 Reportedly quoting Nelson, the *politico.com* article states that Nelson said the list "was to
19 identify specific voters that the congressman could reach out to via email or phone call or letter
20 to discuss issues of importance to them and having [sic] them contribute money to his
21 campaign." *Id.* Based on the *politico.com* article, complainant alleges that Respondents
22 "violated federal law and privacy rights of individuals by pulling the names of donors to Michael

² The Response was submitted on behalf of the Committee. McMahon did not separately respond.

1 Grimm from Grimm's second quarter reports and soliciting those individuals for contributions."
2 Complaint at 2.

3 While incorrectly stating that the complaint alleges no "actual use of the data to solicit
4 contributions," the Response correctly states that "[t]he Complaint relies entirely on the *Politico*
5 article, which neither presents nor alleges any actual use by the Committee of Mr. Grimm's FEC
6 report data."³ Response at 2. The Response asserts that "[n]o such use has occurred." *Id.*
7 The Response further maintains that "the Act does not prohibit campaigns from reviewing or
8 analyzing their opponents' FEC reports for non-fundraising, non-commercial purposes," but only
9 the actual sale or use of the data for fundraising and commercial purposes. *Id.* at 2, 3.

10 According to the Response, "Ms. Nelson's statements that the list was compiled to solicit
11 contributions for the campaign are inaccurate and in no way reflect the actual use of the list by
12 the Committee." *Id.* at 3.

13 The Act and the Commission's regulations prohibit only the actual sale or use of FEC
14 data for the purpose of soliciting contributions or for any commercial purpose. 2 U.S.C.
15 § 438(a)(4); 11 C.F.R. § 104.15(a). There are no facts in the complaint or in publicly available
16 sources showing that the Committee used any information obtained from FEC data to solicit
17 contributions, and the Response denies it was so used. Moreover, we compared the Committee's
18 itemized contributions received after July 15, 2010 with the itemized contributions disclosed by
19 the Grimm committee in its 2010 July Quarterly Report, and found no common contributors.⁴

³ The Response makes this statement, but ends it with "except for Ms. Nelson's own unauthorized disclosure to the press, which resulted in her termination." However, the *politico.com* article does not attribute any statements to Nelson concerning the Committee's actual use of the list.

⁴ We also compared contributors to Michael Allegretti, Grimm's Republican primary opponent, as disclosed in his committee's 2010 July Quarterly Report to those disclosed by the McMahon Committee after July 15, 2010, and found no common contributors.

1 Because there is no available factual support for the complaint's allegation that respondents used
2 FEC data to solicit contributions, we recommend that the Commission find no reason to believe
3 that Michael McMahon or Michael McMahon for Congress and George Caputo, in his official
4 capacity as treasurer, violated 2 U.S.C. § 438(a)(4), and close the file.

5 **III. RECOMMENDATIONS**

- 6 1. Find no reason to believe that Michael McMahon violated 2 U.S.C. § 438(a)(4).
7
8 2. Find no reason to believe that Michael McMahon for Congress and George Caputo, in
9 his official capacity as treasurer, violated 2 U.S.C. § 438(a)(4).
10
11 3. Approve the attached Factual and Legal Analyses.
12
13 4. Approve the appropriate letters.
14
15 5. Close the file.

16 Christopher Hughey
17 Acting General Counsel

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19
20 February 7, 2011
21 Date

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